

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.505 pertaining to air quality operation)
fees)
)
) NOTICE OF PUBLIC HEARING
) ON PROPOSED AMENDMENT
) (AIR QUALITY)

TO: All Concerned Persons

1. On July 13, 2018, at 1:00 p.m., the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Board of Environmental Review (board) will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., July 6, 2018, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.8.505 AIR QUALITY OPERATION FEES (1) through (6) remain the same.

(7) The air quality operation fee for facilities other than portable facilities or registered oil and gas well facilities is: ~~based~~

(a) an administrative fee of \$900; and

(b) a tonnage fee of an amount not to exceed \$45.37 per ton of on the actual, or the estimated actual, amount emissions of air pollutants emitted by the facility during the previous calendar year and is an administrative fee of \$800, plus \$38.24 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted.

(8) remains the same.

(9) The air quality operation fee for registered oil and gas well facilities is ~~\$800~~ \$900.

(10) through (13) remain the same.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA

IMP: 75-2-211, 75-2-220, 75-2-234, MCA

REASON: Under 75-2-220, MCA, a person required to obtain a permit or to register a facility under the Clean Air Act of Montana is required to submit to the department fees set by the board that are sufficient to cover the reasonable costs,

direct and indirect, of developing and administering the permitting and registration requirements for the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the board based on a report by the department.

The amount of revenue the department needs to generate through the collection of air quality fees depends primarily on the amount of the legislative appropriation, projected expenditures, and projected revenue. The last time the board raised air quality operation fees was in 2009; for that year, the reported emissions were more than 90,000 tons. In 2017, roughly 49,000 tons of pollutants were emitted. With decreased emissions, unstable federal funding, and a decrease in the money received from the state general fund, collection of adequate fee revenue needs to be ensured. The proposed fee increase would allow the department's air quality bureau to collect sufficient revenue to support the appropriate implementation of the air quality program.

Annual air quality operation fees are required for all facilities that hold a Montana air quality permit, that have been issued an air quality operating permit, or that are registered oil and gas well facilities. The air quality operation fee for facilities other than portable facilities or registered oil and gas well facilities consists of a flat administrative fee plus a fee based on the actual, or estimated actual, tonnage of certain air pollutants emitted by the facility during the previous calendar year. This per-ton fee is assessed for PM-10 (particulate matter with a diameter less than 10 micrometers), sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted. Portable facilities and oil and gas well facilities are assessed a flat fee only.

The board is proposing to increase both the flat fee for oil and gas well facilities and the administrative fee for facilities other than portable facilities from \$800 to \$900. In addition, the board is proposing to set the operation fee at an amount not to exceed \$45.37 per ton of emissions. The board may adopt a definite amount when it considers adopting final rule amendments at the October 5, 2018 board meeting.

There would be a monetary impact on approximately 1,500 facilities because of this proposed action. The \$100 increase for the oil and gas well facilities would impact 1,225 facilities, generating revenue of \$122,500. The 281 permitted facilities that pay the flat administrative fee and the per-ton operating fee would experience the \$100 increase in the administrative fee plus an increase not to exceed \$7.13 per ton of emissions. In 2017, the 281 facilities emitted 49,000 tons of pollutants for which the tonnage fee is assessed. Based on this tonnage and the number of facilities paying the administrative fee, the air quality program would receive an additional \$377,470, paid proportionally by the permitted facilities.

If adopted, these amended fees would be billed in calendar year 2018 to fund the department's activities in fiscal year 2019 and would be based on emissions reported for calendar year 2017.

4. Concerned persons may submit their data, views, or arguments in writing to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., July 20, 2018. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Sarah Clerget, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes

EDWARD HAYES

Rule Reviewer

BY: /s/ Christine Deveny

CHRISTINE DEVENY

Chairman

Certified to the Secretary of State, June 12, 2018.